

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Anthony Andolina,

Case No.: 2:22-cv-01935-APG-EJY

Plaintiff

Order

v.

C.O. Eaton, et al.,

Defendants

Plaintiff Anthony Andolina brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while detained at Clark County Detention Center. ECF No. 1-1. On November 29, 2022, the magistrate judge ordered Andolina to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before December 29, 2022. ECF No. 3. The magistrate judge warned Andolina that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. *Id.* at 2. The deadline expired and Andolina did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond. Additionally, the court's mail to Andolina has been returned as undeliverable because he has not submitted an updated address. ECF No. 4.

I. Discussion

District courts have the inherent power to control their dockets, and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. *See*

1 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply
 2 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*
 3 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
 4 order). In determining whether to dismiss an action on one of these grounds, I must consider: (1)
 5 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
 6 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
 7 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
 8 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*
 9 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

10 The first two factors, the public’s interest in expeditiously resolving this litigation and the
 11 court’s interest in managing its docket, weigh in favor of dismissal of Andolina’s claims. The
 12 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 13 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 14 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th
 15 Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is
 16 greatly outweighed by the factors favoring dismissal.

17 The fifth factor requires me to consider whether less drastic alternatives can be used to
 18 correct the party’s failure that brought about the court’s need to consider dismissal. *See Yourish*
 19 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
 20 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
 21 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
 22 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
 23 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial

1 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have
2 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before
3 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*
4 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed
5 until and unless Andolina either files a fully complete application to proceed *in forma pauperis*
6 or pays the \$402 filing fee for a civil action, the only alternative is to enter a second order setting
7 another deadline. But the reality of repeating an ignored order is that it often only delays the
8 inevitable and squanders the court’s finite resources. And because the court’s mail to Andolina
9 has been returned as undeliverable, the chance that the order will reach him is low. Setting
10 another deadline is not a meaningful alternative given these circumstances. So the fifth factor
11 favors dismissal.

12 **II. Conclusion**

13 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
14 dismissal. It is therefore ordered that this action is dismissed without prejudice based on
15 Andolina’s failure to file a fully complete application to proceed *in forma pauperis* or pay the
16 full \$402 filing fee in compliance with the magistrate judge’s November 29, 2022, order. The
17 Clerk of Court is directed to enter judgment accordingly and close this case. No other documents
18 may be filed in this now-closed case. If Andolina wishes to pursue his claims, he must file a
19 complaint in a new case.

20 Dated: January 9, 2023

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22 _____
23 U.S. District Judge